

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

(Attorney Docket No. 14181US02)

In the Application of:

Ed Frank et al.

Serial No.: 10/658,578

Filed: September 9, 2003

For: METHOD AND SYSTEM FOR  
PROVIDING BANDWIDTH ALLOCATION  
AND SHARING IN A HYBRID  
WIRED/WIRELESS NETWORK

Examiner: Phuc H. Tran

Group Art Unit: 2471

Confirmation No.: 3394

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Transmitted via the Office electronic filing  
system August 23, 2010.

**APPLICATION FOR RECONSIDERATION OF THE  
DETERMINATION OF PATENT TERM ADJUSTMENT  
UNDER 35 U.S.C. 154(b)  
ACCOMPANYING THE NOTICE OF ALLOWANCE  
(37 CFR § 1.705)**

Commissioner for Patents  
P.O. Box 1450  
Alexandria VA 22313-1450

Sir:

The Applicant respectfully requests reconsideration of the Determination of Patent Term Adjustment Under 35 U.S.C. 154(b) (PTOL-85) accompanying the Notice of Allowance mailed July 9, 2010 ("the Decision"), to the extent indicated in the following discussion and the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR. This application for reconsideration of the Decision is being filed after the date of mailing of the Notice of Allowance and no later than the payment of the issue fee.

This application for reconsideration of the Decision is accompanied by the fee set forth in § 1.18(e) (\$200).

This application for reconsideration of the Decision includes below a statement of the facts involved in sufficient detail to allow the United States

Patent and Trademark Office (USPTO) to reach the correct patent term adjustment respecting the disputed items.

The Applicant's calculation shows that the correct patent term adjustment should be 2261 days.

The bases under § 1.702 for the adjustment are as follows.

### **Positive Patent Term Adjustment**

#### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

The USPTO calculation of the patent term adjustment under the three-year deadline for issuing a patent after its filing date was 0 days. The Applicant disagrees with this determination because the patent term adjustment on this ground should instead be 1592 days, minus 0 days consumed by an appeal, for a net adjustment of 1592 days.

Specifically, the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR shows that:

- the actual filing date of the application was September 9, 2003,
- the third anniversary of the actual filing date was September 9, 2006,
- the USPTO projected in the DETERMINATION OF PATENT TERM ADJUSTMENT UNDER 35 USC 154(b) that the patent will issue on the first Tuesday preceding the 28th week after July 9, 2010 (the mailing date of the Determination of Patent Term Adjustment under 35 USC 154(b)), which results in a predicted patent issue date of January 18, 2011,
- the predicted patent issue date stated in the last point will be 1592 days after the third anniversary of the actual filing date, which is the appropriate patent term adjustment.

## **Reductions in Patent Term Adjustment**

### **Removing Overlap**

- Two or more grounds of delay overlap from September 9, 2006, to April 20, 2007, totaling 223 days of delay.

This overlap has been subtracted from the patent term adjustment in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR.

### **Three Months to Respond to Office actions (37 CFR § 1.704(b))**

The Applicant is contesting the following application(s) of 37 CFR § 1.704(b) to reduce the patent term adjustment in the present application.

#### **Period from January 5, 2008, to January 7, 2008**

- The pertinent Office action was mailed on October 5, 2007,
- The date three months after the mailing date of the Office action is Saturday, January 5, 2008,
- The response to the Office action was filed on Monday, January 7, 2008,
- The reduction in the patent term adjustment proposed by the USPTO is 2 days,
- The Applicant's position is that the present Office action response filed on the first business day after a deadline falling on a weekend or holiday is not late, establishing the correct reduction in patent term adjustment is 0 days. The basis for this position is 37 CFR § 1.6(a)(1), which states in relevant part, "The Patent and Trademark Office is not open for the filing of correspondence on any day that is a Saturday, Sunday, or Federal holiday within the District of Columbia," and 37 CFR § 1.7(a), which states in relevant part: "When the day, or the last day fixed by statute or by or under this

part for taking any action or paying any fee in the United States Patent and Trademark Office falls on Saturday, Sunday, or on a Federal holiday within the District of Columbia, the action may be taken, or the fee paid, on the next succeeding business day which is not a Saturday, Sunday, or a Federal holiday.” In this case, 37 CFR § 1.7(a) is applicable because the last day set by statute (35 USC § 154(b)(2)(C)(ii)) for taking the action of filing a response to an Office action without being “deemed to have failed to engage in reasonable efforts to conclude processing or examination of an application,” falls on a Saturday, Sunday, or on a Federal holiday within the District of Columbia.

### **Net Patent Term Adjustment**

The changes requested by the Applicant to the USPTO patent term adjustment determination in the Decision are as follows:

#### **Three Year Guarantee (35 USC § 154(b)(1)(B))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	1592

### **Reductions in Patent Term Adjustment**

- Removing Overlap**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	0
<b>Applicant Calculation</b>	223

- **Three Months to Respond to Office actions  
(37 CFR § 1.704(b))**

	<b>Patent Term Adjustment (days)</b>
<b>USPTO Calculation</b>	2
<b>Applicant Calculation</b>	0

### **Conclusion**

The Applicant requests modification of the patent term adjustment as indicated above. As shown in the enclosed modified version of the USPTO Patent Term Adjustment calculation on PAIR, the patent term adjustment proposed by the Applicant is thus 2261 days.

Please charge any fees or credit any overpayment of fees presently required to McAndrews, Held & Malloy, Ltd., Deposit Account No. 13-0017.

Respectfully submitted,

McANDREWS, HELD & MALLOY, LTD.

Date: August 23, 2010

By: /Hopeton S. Walker/  
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Ser. No.	10/658,578	Docket No.	14181US02
		PTO Calculation	

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10/658,578	METHOD AND SYSTEM FOR PROVIDING BANDWIDTH ALLOCATION AND SHARING IN A HYBRID WIRED/WIRELESS NETWORK	07-22-2010::09:59:32
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### Patent Term Adjustments

Patent Term Adjustment (PTA) for Application Number: 10/658,578

Filing or 371(c) Date:	09-09-2003	USPTO Delay (PTO) Delay (days):	-
Issue Date of Patent:	-	Three Years:	-
Pre-Issue Petitions (days):	-	Applicant Delay (APPL) Delay (days):	-
Post-Issue Petitions (days):	-	Total PTA (days):	890
USPTO Adjustment(days):	-	Explanation Of Calculations	

### Patent Term Adjustment History

Date	Contents Description	PTO(Days)	APPL(Days)
07-09-2010	Mail Notice of Allowance		
07-07-2010	Document Verification		
07-07-2010	Notice of Allowance Data Verification Completed		
07-07-2010	Case Docketed to Examiner in GAU		
07-06-2010	Examiner's Amendment Communication		
04-30-2010	Date Forwarded to Examiner		
04-21-2010	Response after Non-Final Action		
02-01-2010	Mail Non-Final Rejection		
02-01-2010	Non-Final Rejection		
11-21-2009	Date Forwarded to Examiner		
11-03-2009	Response after Non-Final Action		
10-08-2009	Case Docketed to Examiner in GAU		
08-05-2009	Mail Non-Final Rejection		
08-03-2009	Non-Final Rejection		
05-28-2009	Date Forwarded to Examiner		
04-10-2009	Response after Non-Final Action		
01-21-2009	Mail Non-Final Rejection		
01-21-2009	Non-Final Rejection		
12-04-2008	Date Forwarded to Examiner		
12-02-2008	Amendment after Final Rejection		
10-16-2008	Mail Final Rejection (PTOL - 326)		
10-14-2008	Final Rejection		
10-06-2008	Case Docketed to Examiner in GAU		
06-26-2008	New or Additional Drawing Filed		
07-28-2008	Date Forwarded to Examiner		
06-26-2008	Response after Non-Final Action		
03-26-2008	Mail Non-Final Rejection		
03-21-2008	Non-Final Rejection		
01-28-2008	Date Forwarded to Examiner		
01-07-2008	Response after Non-Final Action		2
10-05-2007	Mail Non-Final Rejection		⬆

10-01-2007	Non-Final Rejection	
07-20-2007	Date Forwarded to Examiner	
07-19-2007	Response after Non-Final Action	
04-20-2007	Mail Non-Final Rejection	892
04-16-2007	Non-Final Rejection	⬆
05-27-2005	Information Disclosure Statement considered	⬆
03-22-2006	Information Disclosure Statement considered	⬆
03-21-2007	Case Docketed to Examiner in GAU	⬆
01-18-2007	Case Docketed to Examiner in GAU	⬆
03-29-2006	Reference capture on IDS	⬆
03-22-2006	Information Disclosure Statement (IDS) Filed	⬆
03-22-2006	Information Disclosure Statement (IDS) Filed	⬆
03-21-2006	Case Docketed to Examiner in GAU	⬆
01-27-2006	Case Docketed to Examiner in GAU	⬆
04-01-2005	Miscellaneous Incoming Letter	⬆
05-27-2005	Reference capture on IDS	⬆
05-27-2005	Information Disclosure Statement (IDS) Filed	⬆
05-27-2005	Information Disclosure Statement (IDS) Filed	⬆
07-06-2004	IFW TSS Processing by Tech Center Complete	⬆
07-06-2004	Case Docketed to Examiner in GAU	⬆
12-04-2003	Application Return from OIPE	⬆
12-04-2003	Application Return TO OIPE	⬆
12-03-2003	Application Dispatched from OIPE	⬆
12-04-2003	Application Is Now Complete	⬆
11-21-2003	Cleared by OIPE CSR	⬆
10-16-2003	IFW Scan & PACR Auto Security Review	⬆
09-09-2003	Initial Exam Team nn	⬆

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